



KAW NATION

Drawer 50
Kaw City, OK 74641
(580) 269-2552 Fax (580) 269-1157

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by)	
Removing Barriers to Infrastructure Investment)	WT Docket No. 17-79
)	WT Docket No. 15-180
)	
Revising the Historic Preservation Review Process)	
for Wireless Facility Deployments)	

NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

COMMENTS OF: Kaw Nation

April 12, 2017

The Kaw Nation

The Kaw Nation is located in North Central Oklahoma with its seat of government located in Kaw City. The Kaw Nation works with a variety of federal agencies on small and large projects in the compliance of federal laws, including but not limited to the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), Archaeological Resources Protection Act of 1979 (ARPA), and National Environmental Policy Act (NEPA). The Nation is active in protecting irreplaceable sites and locations that are of religious and cultural significance to its people by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) system has proven to be a very useful tool to track and monitor, the placement of cellular technology infrastructure. Over the past year, we have worked with, and developed quality relationships with, the many consultants installing telecommunication infrastructure facilities, including cell tower siting, through the TCNS Program.

Summary of Position

The Kaw Nation supports this reform effort to provide structure and consistency for the TCNS program. The Kaw Nation supports a comprehensive fresh look at FCC rules and procedures implementing the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) in the context of wireless infrastructure deployment with a goal of mutual benefit to the Tribal Nations and Industry actors.

General Comments

Delay of Development

The Kaw Nation agrees that the deployment of next-generation wireless broadband has the potential to bring enormous benefits to our Nation and our surrounding communities. We also agree that continuing to meet this demand and realizing the

potential benefits of next-generation broadband will depend on having an updated regulatory framework that promotes and timely facilitates next generation network infrastructure facility deployment. However, we do not believe development is impeded by taking a reasonable time to ensure heritage preservation and cultural sensitivity. The Kaw Nation would support rules that balance these two goals.

In that regard, the industry raised valid concerns in the *Notice of Proposed Rulemaking and Notice of Inquiry* regarding unnecessary delay in processing construction applications. The Kaw Nation would support more expansive “Deemed Granted” remedies for exceeding reasonable regulatory deadlines for processing a completed application. The Kaw Nation would support rulemaking, or negotiated agreements, that establish timeline rebuttable presumptions for tribal review programs. The Kaw Nation would not support an “absolute limit” rule that results in relinquishment of tribal sovereign rights.

The Kaw Nation would also support jurisdictional agreements allowing the Commission to adjudicate “reasonable and good faith effort” to identify historic properties. The Nation is appreciative that the Commission recognizes the right of a tribal nation to request government-to-government consultation in the event of disagreement.

Cost of Compliance

The Kaw Nation agrees that under the current system, the Section 106 review process is often costly and occasionally bears little relationship to the actual costs associated with application review. Although it is noted that industry groups sometimes urge the prohibition of payment of fees to Tribal Nations or wish to impose caps on fees in line with mere administrative processing costs, this lip-service approach is unacceptable to the Kaw Nation. We have a duty to conscientiously make every effort to preserve our heritage and make every effort to fully review all applications.

The Kaw Nation would support a negotiated presumptive capped prepayment fee schedule based on actual costs of investigative and administrative services. In this regard, the Kaw Nation would support a negotiated fee schedule that addressed

small cell, macrocell, batching, colocation, archaeological consultant services, research, surveying, site visits and right of way issues.

Geographic Areas of Interest

The Kaw Nation agrees that under the current system, the geographic areas of interest claimed by some tribal nations has been based on scant archeological evidence. This results in unnecessary cost and burden on development with little preservation benefit. The Kaw Nation would support regulation, or negotiated agreements, that identify tribal nations geographic areas of interest based on archeological, and or, historically significant evidence.


Negotiated Agreements

The Kaw Nation stands ready to participate in individual, or collective negotiations, to reach an agreement on these issues with both governmental and industry officials to resolve any, or all issues that hinder the development of effective technology. We urge the Commission to continue to seek the development of consensus principles.

Summary

Once again the Kaw Nation would like to commend the FCC staff on their efforts to work with Tribal Governments on facilitation of this program. We appreciate the Commission goal of finding cooperative solutions to current sovereign and industry issues. We are confident that a solution can be achieved to streamline the process to facilitate economic development while simultaneously allowing our Nations to preserve our joint history and culture.

Sincerely,



Jacquie Secondine Hensley
Chair of Kaw Nation